

REMARKS

This is intended as a full and complete response to the Office Action dated March 23, 2006, having a shortened statutory period for response set to expire on June 23, 2006. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-25 are pending in the application. Claims 1, 3-18, 20-25 remain pending following entry of this response. Claims 1, 7, 12, 18 and 22 have been amended. Claims 2 and 19 have been cancelled. Applicants submit that the amendments do not introduce new matter.

Claim Rejections - 35 U.S.C. § 112

Claims 7 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 has been amended, thereby obviating the rejection.

Claim Rejections - 35 U.S.C. § 101

Claims 1-25 are rejected under 35 U.S.C. § 101 because the claims are directed to a non-statutory subject matter, specifically, the claims are not directed towards the final result that is “useful, tangible and concrete (See State Street, 149 F. 3d at 1373-74 USPQ2d at 1601-02).

Claims 1, 18, and 22 have been amended, thereby obviating the rejection of the claims and the dependents therefrom.

Applicants traverse the rejection of claim 12.

Applicants respectfully submit that claim 12 does indeed recite a “useful, tangible, and concrete result.” As recited in claim 12, a query is analyzed in a background partition to generate one or more performance measures. As a result of determining the performance measures, the query is executed in the primary partition

only if the one or more performance measures fall within predefined performance criteria.

Therefore, because a useful, tangible, and concrete result is recited in the claim12, Applicants respectfully request withdrawal of the rejection and allowance of claim 12 and the dependents therefrom.

Claim Rejections - 35 U.S.C. § 102

Claims 1-25 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Kazuhiko Mogi et al.* (U.S. Pub. No. 20030093442 A1 and *Mogi hereinafter*).

Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In this case, *Mogi* does not disclose "each and every element as set forth in the claim". For example, regarding claims 1, 12, 18, and 22 *Mogi* does not disclose a logically partitioned system. More specifically, *Mogi* does not disclose executing queries in a primary processing environment comprising at least one primary partition, each primary partition being controlled by a respective operating system associated with the primary partition. Likewise, *Mogi* does not disclose a background processing environment for determining an optimal access plan for a query, the background processing environment comprising at least one background partition controlled by a respective operating system associated with the background partition.

Applicants further point out that Examiners citations in paragraph 100 of *Mogi* is directed to database partitioning rather than logical partitioning of a system. Applicants submit that one skilled in the art will recognize that database partitioning is not the same as logical partitioning. Database partitioning involves dividing a database into distinct

independent parts. Logical partitioning, on the other hand, is directed towards dividing the resources, for example processors and memory, of a system. Each partition in a logically partitioned system is controlled by a respective operating system as is recited in the claims.

Therefore, because *Mogi* does not disclose a logically partitioned system, claims 1, 12, 18, 22, and the dependents therefrom are believed to be allowable, and allowance of the claims is respectfully requested.

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

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